

MINUTES OF THE SECOND MONTHLY MEETING OF THE TRINIDAD CITY COUNCIL
WEDNESDAY, MARCH 22, 2017

I. CALL TO ORDER

- Mayor Miller called the meeting to order at 6:00pm. Council members in attendance: West, Ladwig Miller, Baker, Rotwein.
- City Staff in attendance: City Manager Dan Berman, City Clerk Gabriel Adams.

II. PLEDGE OF ALLEGIANCE

III. ADJOURNMENT TO CLOSED SESSION – No closed session

IV. RECONVENE TO OPEN SESSION

V. APPROVAL OF AGENDA

- *Rotwein requested to pull #1 for discussion.*
- Motion (Rotwein/West) to approve the agenda as amended. Passed unanimously.*

VI. APPROVAL OF MINUTES – No minutes to approve.

VII. COUNCIL MEMBER REPORTS – No reports.

VIII. STAFF REPORTS – No reports.

IX. ITEMS FROM THE FLOOR:

Steve Ruth – Trinidad

Summarize his ongoing view dispute. Requested 2 alders on city property be removed and controlled. Submitted a detailed letter describing the view issues to the City Clerk.

Alan Grau – Trinidad

Request to move discussion #4 to first on the agenda. Does the City have law enforcement? Remove all illegal signs on Edwards Street. Remove all non-compliant vacation rental signs.

Leslie Farrar – Trinidad

Request to move discussion #4 to first on the agenda. Concerned about City debts related to stormwater phase 2 construction. Has any stormwater phase 1 testing been done?

Tom Davies – Trinidad

At the last meeting it was decided to have 2 Councilmembers reviewing all VDU exceptions. All exparte communications should be disclosed to the public.

Kathleen Lake – Trinidad

I'm having trouble communicating with the City. Who's responsible for this? Why is the Sheriff writing tickets in the County and not enforcing local ordinances?

X. CONSENT AGENDA

1. Authorize Staff to Apply for USDA and CWSRF Low Interest Loans for the Storm Water Phase II Project.
Rotwein: Requested a full presentation on Stormwater I and II at a future meeting.

Public comment included:

Leslie Farrar – Trinidad

Do we have data results for Phase 1? I'm not confident with the engineers.

Alan Grau – Trinidad

There should be stricter septic standards for STR's.

Motion (Ladwig/West) to approve consent #1. Passed unanimously.

2. Authorize Staff to Apply for Disaster Assistance Funding
3. State Requirements for Recycled Materials in Street Repair Projects (PRC42700) – (Discussion)
4. Authorize Public Release of Attorney Memos re: Brown Act and Citizen Petition
5. Authorize Letter of Support for Last Chance Grade Repair

*Motion (West/Baker) to pull item 1 for discussion and approve consent as amended. **Passed unanimously.***

XI. DISCUSSION/ACTION AGENDA

1. Discussion/Decision regarding review of Environmental Assessment for the Trinidad Rancheria's Harbor Properties

City Manager Berman explained that the Trinidad Rancheria is applying to transfer the Harbor-Area properties they own into federal trust status. As part of their application process, they have developed an Environmental Assessment document that addresses the impacts of two construction projects on the Harbor Properties: Storm Water Improvements and an Interpretive Visitor Center, as well as the transfer from fee status to federal trust status.

The Environmental Assessment is open for public comment until April 6th 2017. It is a 382 page document, available on the Rancheria's website, with copies at City Hall. This is not the only comment period in the overall fee to trust application, but it is a key step in the process. The overall application for federal trust status has not yet been accepted as complete by the Bureau of Indian Affairs (BIA). That process is likely to proceed for at least six months from present, and could take much longer. This document is the basis for the NEPA (National Environmental Policy Act) findings that BIA must make in order to approve the fee to trust application.

Staff are in the early stages of reviewing the document, and preliminary comments and observations follow. Staff expect to present additional analysis at the meeting, and encourage the public to provide their comments to the City as well as the Rancheria and BIA. Staff also plan to submit a letter to the BIA requesting additional public comment time of at least another 30 days.

Initial Review Comments

Putting this land into federal trust status would effectively remove it from the City. The City would have no planning and permitting jurisdiction or authority over what would become effectively federal land. The City would also cease to collect any revenue from the properties; we are in the process of quantifying that impact (see details under note 4 below). The City would lose approximately 9 acres of land out of 310 acres total, or 3% of the land area of the City. This percentage does not reflect the central importance of the Harbor to the identity of Trinidad throughout its history. The Harbor would still be there, and the Rancheria clearly needs public and commercial fishery use to continue as a central part of their business model. Public easements to the pier in particular are in place as part of recent state funding for the pier. But the local City government would have no real control over its future uses. The specific projects described in the EA are of much less concern to staff than the fee to trust application. Staff support the stormwater project completely, and are supportive in concept of an interpretive visitor center.

Detailed Comments and Questions:

1. **Section I and Figure 1-3. Land subject to transfer into trust status.**

The proposed project includes transferring almost 3 acres of land to trust status that is outside the parcels owned in fee by the Trinidad Rancheria. Staff has questions as we understood that only lands owned in fee can be transferred into federal trust status. Bay St., as shown on Figure 1-3, was vacated by the City in 1912 and may belong to the Rancheria, although this has not been clearly established. The area indicated for inclusion along the beaches on each side of the Little Head appears to be largely below the high tide line. Staff's understanding is that these beaches are state tidelands which would not be eligible to transfer as they are not owned by the Rancheria. The pier itself is also shown as property to be included in the transfer. Staff's understanding is that the Rancheria does own the structure of the Pier, but not the underlying waters (tidelands) which are state owned, and granted to the City by the State for management.

2. Project Purpose, Need, and Alternatives

The EA combines the two construction projects and the placement of the land in trust into a single project for analysis. The only alternative evaluated is the 'no-action' alternative. But the construction projects and the transfer of the land into federal trust status do not need to be linked. In fact they seem quite separate. The storm water improvements are already funded by state grants and will almost certainly be implemented independent of the trust application. The Interpretive Visitor Center could also proceed independent of the trust application, with permitting through the City and Coastal Commission.

The Purpose and Need statement (section 1.4 starting on page 1-3) lists 7 purposes served by the Project, but only the first of them seems to clearly apply to the trust application – facilitating self-governance by exercising sovereignty over the land. The proposed 'Trinidad Harbor District' (page 2-3) to better organize and manage the Harbor area businesses seems like something the Rancheria could implement now. If there are economic benefits to the Rancheria to placing the land into trust, they are not well explained in this section. The Harbor was not part of the Rancheria's original land base, and the worthy goals of preserving the local environment, reducing stormwater runoff, and highlighting the cultural and economic importance of the Harbor do not obviously depend on federal trust status.

3. Affected Environment – Section 3

Water – Page 3-6

The information on the City's Water Plant does not reflect the recent upgrades to the Plant. Staff will provide more current information in our comment letter.

Flooding – Page 3-7

FEMA has recently conducted coastal flooding models of the Humboldt Coastline including the Harbor Area and is in the process of updating Flood Insurance Rate Maps (FIRM). It does not appear that this latest information is included.

4. Socioeconomic Impacts – Section 4 p 4-10 9 (p 73 of 382)

This section notes that property taxes were \$46,063 in 2014, and declares them '*de minimis*' in relation to the County's total property tax revenue. Staff see at least three financial impacts to the City of Trinidad that are not addressed here at all:

- a. **Property tax** – Property taxes within the City are paid to the County, who then returns a portion of those revenues to the City. While the Harbor property taxes may be small relative to total County property tax revenue, they are significantly larger relative to the City's property tax revenue, and the City's budget. Staff are working with County Staff to get precise numbers.
- b. **Sales tax** – The City receives sales tax on Seascope restaurant sales as well as the bait shop. These funds will be lost to the City in the event of federal trust status. Staff have requests in to the State Board of Equalization to help quantify these amounts.
- c. **Transient Occupancy Tax** – The Rancheria operates a Short Term Rental in the home above the Seascope. The City received almost \$5,000 in TOT revenues from this rental in the last fiscal year.

Additional Questions Generated to date:

This EA, if approved, will provide NEPA analysis for the two proposed construction projects of the Stormwater Improvements and the Visitor Center, as well as taking the land into Trust. Is it correct that, if the land goes into trust, additional projects could also be proposed in the future, subject to a subsequent EA and other federal requirements? Would the BIA be the entity ultimately reviewing and approving future proposals, or would the Tribal Council serve that role?

Public comments included:

Shirley Laos – Trinidad Rancheria

This is the first phase of the application process. Some comments noted by the City are good, but additional comment periods will better address questions about the Trust status. In this document, projects are addressed by focus, such as the Pier, for instance, being considered a transportation facility. The map we submitted was based on BLM surveys and may have discrepancies. The Rancheria is not opposed to negotiating or reciprocating with the City for potential lost revenues due to trust status. The

bathroom facility at the Harbor is a public facility paid for entirely by the Tribe. We welcome any further questions.

Elaine Weinreb – Trinidad Area Resident

An environmental document should be accurate and transparent. This one is not. The City was omitted as an entity subject to loss by this trust status, and specifically loss of revenue due to property, sales, and occupancy taxes. How would you fill in the loss to your budget? I'm happy to hear the City is dedicating time to this process.

Council comments included:

Rotwein: Thanked Weinreb for comments and letter, and thanked the Rancheria partners. I'm happy to hear the Rancheria is open to negotiating long-term fiscal losses because the fiscal solvency of the City is a great concern. The tidelands lease revenue may not be in jeopardy since the trust wouldn't affect the submerged lands.

*Motion (Rotwein/West) to receive presentation, public comment, and approve a letter requesting additional time to comment on the Environmental Assessment. **Passed unanimously.***

2. Discussion/Decision regarding Trail Committee Proposal

City Manager Berman explained that at the February Council meeting an ad-hoc Committee of Councilmembers Susan Rotwein and Jack West was tasked with developing a charter for a standing Trails Committee to include composition of the group, purpose, and goals to bring back for full Council discussion.

That draft Charter outlines the proposed role, duties, and composition of the Committee. The City of Trinidad is searching for volunteers to form a standing Trails Committee to serve in an advisory capacity to the Council, Commissions, or City Staff as appropriate, in matters relating to or affecting trails in the City of Trinidad; including

- To make recommendations to City Staff on the management, maintenance, and repair of trails in the City of Trinidad.
- To make recommendations during the environmental review process on projects that may involve or affect trails in the City of Trinidad; and
- To provide a forum for community engagement, outreach, and education regarding trails.

COMMITTEE COMPOSITION & MEETINGS:

Meetings will be held quarterly, and publicly noticed in accordance with the Brown Act, and open to all. Membership of the Trails committee shall be appointed by the City Council, and shall be composed of the following representatives:

- (1) City Councilmember (Committee Chair)
- (1) Planning Commissioner
- (2) General Public representatives
- (1) Tribal representative of the Yurok Tribe
- (1) Tribal representative of the Trinidad Rancheria
- (1) Visitor Services/Business Community representative

Public comment included:

Shirley Laos – Trinidad

Tribal Council will be sending a letter submitting a membership name for consideration.

Kathleen Lake – Trinidad

There should be quarterly meetings and the Land Trust should have a permanent seat on the committee.

Sungnome Madrone – Trinidad Area Resident

I support the Land Trust having a permanent seat on the committee. Trinidad area residents should also be allowed to serve, not just in-city residents.

Richard Johnson – Trinidad Area Resident

Support Land Trust permanent seat. They hold the key to a number of additional trail opportunities in town.

Council comments included:

Rotwein: There are a lot of in-city residents interested. The Planning Commission seat could be an area resident. The Land Trust is already an active participant and landowner. The idea was to have resident users to be on the committee. I really wanted to avoid naming agencies and including them in this process, but I would suggest the Land Trust apply as a member of one of the determined categories and see what happens.

Baker: It'd like to keep 2 seats reserved for in-city residents.

Miller: I support the Land Trust on the committee because they are very involved in local trails and their influence and contribution to Trinidad is tremendous. I can support having 2 area residents in the event there are not 2 in-city residents willing to serve.

Ladwig: Agree with Miller.

West: I expect the Land Trust to be an integral part of the group already since the meetings are open to the public. I also would consider their position on the committee as representatives of Visitors Services should they apply.

*Motion (Rotwein/Ladwig) to 1) include the Land Trust within the existing framework, but not give them their own seat on the committee, and 2) in the event two in-city residents do not apply, one can be appointed from the greater Trinidad area. **Passed unanimously.***

3. Discussion of Draft Noise Ordinance

City Manager Berman explained that at the February Council meeting an ad-hoc Committee composed of Steve Ladwig & Dwight Miller was tasked with meeting with interested citizens to further revise the Ordinance. They met with citizens Kathleen Lake, Pat Morales, and Sandra Cuthbertson in mid-February. Two other citizens expressed interest in attending but had schedule conflicts: Dorothy Cox and Jonna Kitchen. Discussions compared language of the draft ordinance with written recommendations by citizens, and with comments by our lawyer Andrew Stunich. We discussed each section of the draft Noise Ordinance. On some sections, we agreed to add language, and others we came to general agreement about what was needed to make a stronger and enforceable ordinance.

Mayor Miller explained that on Sunday, Feb 26, the Committee (Steve, Dwight) met to summarize our recommendations. The Committee notes have been written on the right side of a 2-column representation of the draft ordinance. The Noise Committee is seeking the full council's input on the following points in particular, and intends to come back at the next meeting with a final draft for consideration and a first reading to discuss but not finalize the ordinance. The primary points of concern are:

SECTION 8.06.020 - QUIET HOURS

Council should decide the hours, with recommendations an hour less for Town Hall

SECTION 8.06.050 – PENALTY

Council should recommend, and staff (planner & lawyer) get language written for infractions & administrative fines.

SECTION 8.06.060 - ENFORCEMENT

This is the big one. We need to rewrite this section, with direction from the Council, to ensure that citizens can understand a simple step-by-step process for resolving noise complaints.

Rotwein: I want to hear input on the component policies, not wordsmith it tonight.

Ladwig: The meetings were focused on noise complaints related to STR's, Town Hall, and fireworks.

Miller: Asked for comments on the incorporated changes, but noted that the draft will go back to the Planner for a review of General Plan consistency and come back at a future meeting for consideration.

Public comment included:

Kathleen Lake – Trinidad

STR owners should recuse themselves from the discussion. Also complained that their comments were not included in this draft as promised. General Plan consistency is important, but this draft does not provide just and reasonable results for the community.

Section 8.06.020 Quiet Hours

Kathleen Lake – Trinidad

Compiled information from public concerns and ranked the problems. #1 STR's, #2 Town Hall, #3 Fireworks. 10pm is far too late for working families and seniors. Quiet hours should be much earlier.

Alan Grau – Trinidad

7:00am is too early for Sunday.

Dan Cox – Trinidad

Need to work on the garbage truck. Who's going to enforce this?

Leslie Farrar – Trinidad

Support 7:00am-8:00pm, but working in the yard at 7:00am is too early.

Tom Davies – Trinidad

I support the citizens recommended hours. Vacation rental guests arriving late is disturbing. It happens every night in the summer.

Dorothy Cox – Trinidad

I reviewed all the Town Hall bookings and found 3 different versions of the contract in the binder. Time and duration of noises should be limited.

Rotwein: I don't have a conflict of interest and don't need to recuse myself from this discussion.

Miller: 9:00pm weekdays, and 10:00pm weekends seems reasonable to me.

Ladwig: The times included are adequate, but unreasonable noise levels should be discussed further.

West, Miller, Ladwig support Friday/Saturday 10pm-8am, and Weekdays 9pm-7am.

Susan, Baker support 10pm-8am every day.

Section 8.06.030

Richard Johnson – Trinidad Area Resident

Last paragraph needs significant review and rewording. City Manager will research.

Kathleen Lake – Trinidad

See General Plan Noise Element.

Section 8.06.040

Ladwig: Should say "city sponsored" or "city-wide" events. Also volunteered to meet again with the committee and continue the discussion to clean up from the progress made tonight and move forward with unresolved issues in the ordinance.

No decision was made. Continued to a future meeting.

4. Discussion/Decision regarding Building Permit Violations and Citywide Policies

City Manager Berman explained that on March 1st Staff received complaints that building permit conditions imposed on the detached living space (a converted shop/garage) at 407 Ocean St were being violated. The City's Building Inspector toured the property a week later, on March 9th, and confirmed that plumbing for a sink and stove had been reinstalled against permit conditions. It appeared that the actual sink and cooktop had been removed in the days before his arrival. The Building Inspector issued a demolition permit to the property owner, requiring the removal of the utilities in violation.

Zoning and OWTS limitations make it difficult to permit secondary dwelling units on many City parcels. What is often possible to permit is the creation of detached living space – a bedroom, office, or study ~~in~~ as a detached structure, ~~whether new or~~ such as a conversion of a garage or shop. Once these living spaces are in place, there are powerful financial incentives, as well as personal convenience, for owners or residents to convert a detached bedroom/living space into its own complete dwelling unit. A clear demarcation between the two situations is not always evident, and it can be difficult for the City to know how such space is being used. State law is also changing to encourage secondary units, and can override some local controls. Staff are recommending the Council direct the Planning Commission and Planning Staff to address these challenges by developing new policy around this issue for the City to consider.

Background:

The back structure at 407 Ocean St. was converted without permits from a shop/garage into a second dwelling unit sometime in the late 2000's under the same owner. After a lengthy process the Planning Commission issued an 'after the fact' permit allowing some of the improvements to remain, but requiring that the structure be 'detached living space' that is considered part of the main house – basically a detached bedroom. No kitchen facilities (sink or stove or cabinets) are allowed, any tenant must have access to the main house for cooking and general use, and a deed restriction was placed on the property explicitly limiting the address to one dwelling unit, and three bedrooms total.

The City has a history of allowing existing, detached structures to be converted into living space as an economical alternative to an addition. These spaces can and have been used for a variety of legitimate, single-family, residential uses. However, there are powerful financial incentives, as well as reasons of simple personal convenience, for owners or residents to convert a detached bedroom/living space into its own complete dwelling unit. Staff, concerned citizens, and the Planning Commission and Council have spent quite a bit of time in recent years over concerns and disagreements about the difference between a second dwelling unit and a detached living space, and whether any secondary cooking facilities should be allowed on a property that only has one dwelling unit.

To reduce the likelihood of future incidents like this recurring problem at 407 Ocean St., Staff recommend that the Council direct Planning Commission and Planning Staff to develop clear policy recommendations about permitting detached living space. The policies should address the potential for these spaces to be utilized as separate dwelling units in violation of permit requirements, and the challenges for the City in identifying such violations. This could include some or all of concepts like a) not allowing them, b) requiring semiannual walk throughs by the Building Inspector, c) creating a more explicit list of exactly what utilities and appliances mark the boundary between a second dwelling unit, and a detached living space associated with a single main dwelling unit.

Staff are not requesting the Council try and tackle this policy at all at this meeting, but simply to ask the Planning Commission and Staff to develop a recommendation.

Public comment included:

Dorothy Cox – Trinidad

Introduced a summary of the letter submitted to the Council for review. Ordinance enforcement needs to be a priority. Acknowledged City staff quick response and resolution to the complaint, but urged the Council to impose fines for such blatant violations and repeat offenders. STR applications should be

complete, and staff responses should be much quicker. Hope problems like these don't happen to others.

Tom Davies – Trinidad

I agree with Dorothy. 10 years I've heard people in both buildings. The owner caused issues for us intentionally. There have been up to 10 vehicles at the house at times. It's been a nightmare. I ask that the garage be restored to its original state. Our alley looks like a ghetto. He should also lose his STR license. It's time the citizens voices are heard.

Alan Grau – Trinidad

I understand that the City Manager inspected this STR. He should apologize for the oversight in approving this illegal unit. Citizens should be thanked, not labeled as complainers.

Leslie Farrar – Trinidad

This is a city-wide issue. Detached dwellings should be investigated by the city. Staff isn't concerned with residents. Residents should be considered as additional staff. Writing more rules won't fix this.

Dan Cox – Trinidad

No fines have been issued? This process needs fines/fees, and I hope his permit gets revoked. He doesn't deserve and upside, and it's a disgrace how he has treated this town.

Council comments included:

West: Asked City Manager to describe the current conditions, and stated that the STR permit is a completely separate issue. There is a code that allows the Planning Commission to revoke a conditional use permit, but as far as a criminal misdemeanor fine is concerned, it sounds counterproductive. Administrative fines/fees sound like a better option. My initial reaction to revoking the permit is that it would open the City up to a big legal fight. I ask the PC to take the lead on developing a policy to see that this doesn't happen in the future.

Rotwein: A citizen could ask the PC to take this issue up. The City has a list of things to enforce such as building codes, view protection, septic permits, STR's, dog licenses and rules, etc. A system needs to be developed to administer these projects and maintain adequate follow up.

Baker: Regular walk-throughs with buildings that have similar histories as 407 Ocean seem reasonable. We also need to be concerned with legal issues, but making conditioned space owners uncomfortable with threatened fines and/or regular walk-thru's is a good idea.

Miller: Enforcement is the elephant in the room.

*Motion (Rotwein/West) to 1) Direct the Planning Commission to develop clear policy recommendations about permitting detached living space to minimize the potential for these spaces to be utilized as separate dwelling units and add enforcement fines and/or fees for violators, and 2) write a letter to the owner of 407 Ocean Avenue regarding restrictions and conditions that affect the property. **Passed unanimously.***

Move to consent #1 for discussion.

XII. ADJOURNMENT

Meeting ended 9:20pm.

Submitted by:

Approved by:

Gabriel Adams
City Clerk

Dwight Miller
Mayor